

AMENDED IN ASSEMBLY MAY 29, 2002
AMENDED IN ASSEMBLY JULY 5, 2001
AMENDED IN SENATE JUNE 4, 2001
AMENDED IN SENATE MAY 16, 2001
AMENDED IN SENATE APRIL 30, 2001
AMENDED IN SENATE APRIL 16, 2001
AMENDED IN SENATE FEBRUARY 13, 2001

SENATE BILL

No. 21

Introduced by Senator Escutia
(Principal coauthor: Assembly Member Shelley)

December 4, 2000

~~An act to amend Sections 32241 and 32243 of, and to add Sections 32246 and 32247 to, the Education Code, and to amend Section 105310 of the Health and Safety Code, relating to school facilities. An act to amend Sections 17074.25, 17582, and 17584.1 of, and to add Section 17074.30 to, the Education Code, relating to school facilities.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 21, as amended, Escutia. Lead-safe schools.

Under existing law, known as the Lead-Safe Schools Protection Act, the State Department of Health Services is required to conduct a sample survey of public elementary schools, public preschools, and public day care facilities for the purpose of developing risk factors to predict lead contamination in those public schools.

Existing law, the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, provides for the issuance, pursuant to the State General Obligation Bond Law, of state general obligation bonds in an amount not to exceed \$9,200,000,000, exclusive of refunding bonds, to provide aid to school districts, county superintendents of schools, and county boards of education in accordance with prescribed provisions, including, but not limited to, the Leroy F. Greene State School Facilities Act of 1998.

This bill would authorize state modernization funding for the identification, assessment, or abatement of lead. The bill would require any application for modernization funding after January 1, 2004, to certify that it has considered the potential for the presence of lead-containing materials in the modernization project and will follow all relevant standards.

The bill would authorize the use of school district deferred maintenance funds for the inspection, sampling, analysis, and management of lead-containing material.

~~Existing law requires the department to, among other things, design and implement a strategy for identifying the characteristics of high-risk schools, conduct a sample survey to determine the likely extent and distribution of lead exposure to children, make specified notifications, develop environmental lead testing methods and standards, and work with the State Department of Education to develop voluntary guidelines for distribution to requesting schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures. Existing law requires that, when a school subject to the act has been determined to have significant risk factors for lead, the school is required to be advised of this finding, and the school is required to notify parents of the provisions of the Childhood Lead Poisoning Prevention Act, as specified.~~

~~Existing law also prohibits the use of lead-based paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or the modernization or renovation of any existing school facility.~~

~~This bill would require all school districts to inspect all schools, as defined, constructed prior to 1992 for lead hazards utilizing inspectors or assessors accredited by the State Department of Health Services. The bill would require all school districts, in conjunction with the department, to develop an inspection plan, review inspection results, and devise an appropriate abatement and control plan, where necessary.~~



~~The bill would require the department, in providing technical assistance, to, whenever feasible, recommend no and low cost remedies as preferred methods of abatement and control. It would also require the school district to carry out the abatement and control of lead hazards. These requirements on school districts would thereby impose a state-mandated local program. The bill would require the department to receive funding for the operational costs of carrying out these provisions. The bill would also require the department to evaluate the school districts' compliance with the lead hazard abatement requirements, and to report its findings to the Legislature on or before January 1, 2004.~~

~~The bill would require all school districts with one or more buildings built before January 1, 1992, as a condition of being granted funds to carry out specified lead abatement and control activities, to certify that at least one maintenance staff member has received specified lead awareness training. It would further require any school district employee who performs specified maintenance tasks to receive the lead awareness training, and to additionally receive certain maintenance and operations training.~~

~~This bill would specify that certain of the above new requirements would be implemented only to the extent funds for these purposes are appropriated to the State Department of Health Services by the Legislature in the annual Budget Act or other statute.~~

~~Existing law establishes the Childhood Lead Poisoning Prevention Fund in the State Treasury, moneys from which are expended, upon appropriation by the Legislature, for the purposes of the Childhood Lead Poisoning Prevention Act.~~

~~This bill would include the above new provisions among those purposes for which moneys in the fund may be expended.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature hereby finds and declares
2 all of the following:

3 (1) Despite the fact that the environmental and educational
4 communities have known for years that lead paint still exists in
5 school buildings in the state, many of these lead hazards have not
6 been mitigated and continue to pose a danger to the health and well
7 being of children.

8 (2) A survey of the State Department of Health Services found
9 that, of 200 randomly selected California elementary schools, 77
10 percent have lead-based paint; 38 percent have lead-based paint
11 that is deteriorating, exposing children to possible lead poisoning;
12 6 percent have soil lead levels greater than the Environmental
13 Protection Agency's limit; and 18 percent have lead levels in
14 drinking water in excess of the action level set by the
15 Environmental Protection Agency.

16 (3) Lead is a highly toxic heavy metal that adversely affects
17 virtually every organ system in the body.

18 (4) Most children with lead poisoning have no overt symptoms,
19 but can suffer permanent neurological deficits and behavioral
20 problems, including attention deficit disorder and loss of IQ
21 points.

22 (5) The United States Center for Disease Control and
23 Prevention has found that "lead poisoning remains the most
24 common and societally devastating environmental disease of
25 young children."

26 (6) Childhood lead poisoning has a significant financial cost,
27 as lead poisoned children incur high medical and special education
28 costs and have reduced lifetime earning potential.

29 (b) Therefore, it is the intent of the Legislature to ~~enact~~
30 *encourage all public schools to identify all lead hazards as quickly*
31 *as possible.*

32 SEC. 2. Section 17074.25 of the Education Code is amended
33 to read:

34 17074.25. A modernization apportionment may be used for
35 an improvement to extend the useful life of, or to enhance the

physical environment of, the school. The improvement may only include the cost of design, engineering, testing, inspection, plan checking, construction management, demolition, construction, the replacement of portable classrooms, necessary utility costs, utility connection and other fees, the purchase and installation of air-conditioning equipment and insulation materials and related costs, furniture and equipment, including telecommunication equipment to increase school security, fire safety improvements, playground safety improvements, the identification, assessment, or abatement of hazardous asbestos *or lead*, seismic safety improvements, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A modernization grant may not be used for costs associated with acquisition and development of real estate or for routine maintenance and repair.

SEC. 3. Section 17074.30 is added to the Education Code, to read:

17074.30. Commencing with applications submitted after January 1, 2004, any school district applying for funding pursuant to this article shall certify that it has considered the potential for the presence of lead-containing materials in the modernization projects and will follow all relevant federal, state, and local standards for the management of any identified lead.

SEC. 4. Section 17582 of the Education Code is amended to read:

17582. (a) The governing board of each school district may establish a restricted fund to be known as the “district deferred maintenance fund” for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, *the inspection, sampling, and analysis of building materials to determine the presence of lead-containing materials*, and any other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the

1 district deferred maintenance fund for purposes of this section.
2 The term “school building” as used in this article includes a
3 facility that a county office of education is authorized to use
4 pursuant to Article 3 (commencing with Section 17280) of
5 Chapter 3.

6 (b) Funds deposited in the district deferred maintenance fund
7 shall only be expended for maintenance purposes as provided
8 pursuant to subdivision (a).

9 (c) The governing board of each school district shall have
10 complete control over the funds and earnings of funds once
11 deposited in the district deferred maintenance fund, provided that
12 no funds deposited in the district deferred maintenance fund
13 pursuant to subdivision (a) or (b) of Section 17584 may be
14 expended by the governing board for any purpose except those
15 specified in subdivision (a) of this section.

16 *SEC. 5. Section 17584.1 of the Education Code is amended to*
17 *read:*

18 17584.1. (a) The governing board of a school district shall
19 discuss proposals and plans for expenditure of funds for the
20 deferred maintenance of school district facilities at a regularly
21 scheduled public hearing. *At the public hearing, the governing*
22 *board of the school district shall address the use of deferred*
23 *maintenance funds for the identification and removal of*
24 *lead-containing materials.*

25 (b) In any year that the school district does not set aside $\frac{1}{2}$ of
26 ~~one~~ 1 percent of its current-year revenue limit average daily
27 attendance for deferred maintenance, the governing board of a
28 school district shall submit a report to the Legislature by March 1,
29 with copies to the Superintendent of Public Instruction, the State
30 Board of Education, the Department of Finance, and the State
31 Allocation Board.

32 (c) The report required pursuant to subdivision (b) shall
33 include all of the following:

34 (1) A schedule of the complete school facilities deferred
35 maintenance needs of the school district for the current year,
36 including a schedule of costs per schoolsite and total costs.

37 (2) A detailed description of the school district’s spending
38 priorities for the current year, and an explanation of why those
39 priorities, or any other considerations, have prevented the school
40 district from setting aside sufficient local funds so as to permit it

1 to fully fund its deferred maintenance program and, if eligible, to
2 participate in the state deferred maintenance funding program as
3 set forth in Section 17584.

4 (3) An explanation of how the governing board of a school
5 district plans to meet its current-year facilities deferred
6 maintenance needs without setting aside the funds set forth in
7 Section 17584.

8 (d) Copies of the report shall be made available at each
9 schoolsite within the school district and shall be provided to the
10 public upon request.

11 (e) The purposes of this section is to inform the public
12 regarding the local decisionmaking process relating to the deferred
13 maintenance of school facilities, and to provide a foundation for
14 local accountability in that regard.

15 ~~legislation to ensure that all lead hazards in all public schools in~~
16 ~~this state be identified and mitigated as quickly as possible.~~

17 ~~SEC. 2. Section 32241 of the Education Code is amended to~~
18 ~~read:~~

19 ~~32241. (a) The State Department of Health Services shall~~
20 ~~conduct a sample survey of schools in this state for the purpose of~~
21 ~~developing risk factors to predict lead contamination in public~~
22 ~~schools. The survey shall include schools that are representative~~
23 ~~of the state by geographical region and size of enrollment. The~~
24 ~~schools to be surveyed shall be selected on the basis of their ability~~
25 ~~to provide data necessary to make scientifically valid estimates of~~
26 ~~the nature and extent of lead hazards. Risk factors shall include,~~
27 ~~but are not limited to, location in relation to high-risk areas, age~~
28 ~~of the facility, likely use of lead paint in or around the facility,~~
29 ~~numbers of children enrolled under the age of six, and results of~~
30 ~~lead screening programs established pursuant to Chapter 5~~
31 ~~(commencing with Section 105275) of Part 5 of Division 103 of~~
32 ~~the Health and Safety Code.~~

33 ~~(b) For purposes of this article, the following terms have the~~
34 ~~following meanings:~~

35 ~~(1) "Department" means the State Department of Health~~
36 ~~Services.~~

37 ~~(2) "Lead accreditation and certification program" means the~~
38 ~~program established by the department pursuant to Section~~
39 ~~105250 of the Health and Safety Code to accredit lead-related~~

1 ~~construction training providers and certify lead-related~~
2 ~~construction workers.~~

3 ~~(3) “Schools” means public elementary schools, public~~
4 ~~preschools, and public day care facilities, and includes buildings~~
5 ~~or structures, playgrounds, athletic fields, or any other area of~~
6 ~~school property visited or used by pupils.~~

7 ~~(4) “Public preschools” and “public day care facilities” mean~~
8 ~~preschools and day care facilities, respectively, located on public~~
9 ~~school property.~~

10 ~~SEC. 3. Section 32243 of the Education Code is amended to~~
11 ~~read:~~

12 ~~32243. (a) When a school building subject to this article has~~
13 ~~been determined to have significant risk factors for lead, the school~~
14 ~~shall be advised of this finding, and the school shall notify parents~~
15 ~~of the provisions of the Childhood Lead Poisoning Prevention Act~~
16 ~~of 1991 (pursuant to Chapter 5 (commencing with Section~~
17 ~~105275) of Part 5 of Division 103 of the Health and Safety Code).~~
18 ~~Within 45 days of receiving this finding, the school principal or the~~
19 ~~director of the school site shall notify the teachers, other personnel,~~
20 ~~and the parents of the finding.~~

21 ~~(b) Any school district that undertakes activities involving the~~
22 ~~inspection of schools for lead hazards or the abatement of lead~~
23 ~~hazards that are identified, including, but not limited to, the~~
24 ~~implementation of the program required by Section 32246, shall~~
25 ~~utilize personnel, inspectors, contractors, and workers who have~~
26 ~~received the appropriate certificates from the lead accreditation~~
27 ~~and certification program, unless these activities can be carried out~~
28 ~~by persons trained pursuant to subdivisions (a) and (b) of Section~~
29 ~~32247.~~

30 ~~SEC. 4. Section 32246 is added to the Education Code, to~~
31 ~~read:~~

32 ~~32246. (a) In accordance with the guidance manual prepared~~
33 ~~by the department pursuant to subdivision (b), all school districts~~
34 ~~that are operating school buildings constructed prior to January 1,~~
35 ~~1992, shall do all of the following:~~

36 ~~(1) Prepare a plan and schedule for inspecting all school~~
37 ~~buildings in the district built before January 1, 1992, and~~
38 ~~implement the plan in accordance with the schedule.~~

39 ~~(2) Review the results of the inspections.~~

~~(3) Devise an appropriate plan for abating or controlling identified lead hazards. The plan shall include an inventory of all lead hazards found in inspected schools, identification of the lead hazards that require abatement or control, a schedule for carrying out necessary abatement and control activities, and the method that will be used for each lead hazard that requires abatement or control. In selecting methods, the school district shall, to the extent feasible, make use of the most current cost-effective lead abatement and control technologies and methods as suggested in the guidance manual prepared by the department pursuant to subdivision (b).~~

~~(4) Implement the lead hazard abatement and control plan in accordance with the schedule established in the plan.~~

~~(b) The department shall prepare a guidance manual that school districts shall use in carrying out the requirements of subdivision (a). The manual shall describe the types of hazards that are risk factors for lead in schools, the methods that may be used to identify them, the factors that should be used to evaluate them, and the most current cost-effective technologies and methods that may be used to abate or control them. Whenever feasible, the manual shall identify as preferred abatement and control methods, no-cost and lowest cost abatement and control remedies.~~

~~(c) The department shall receive funding for the operational costs of carrying out this section.~~

~~(d) The department shall develop and implement an evaluation to determine the extent to which school districts have complied with this section, and shall report its findings to the Legislature on or before January 1, 2004.~~

~~(e) This section shall be implemented only to the extent funds for lead control and abatement are appropriated by the Legislature in the annual Budget Act or other statute.~~

~~SEC. 5. Section 32247 is added to the Education Code, to read:~~

~~32247. (a) Each school district that has one or more buildings built before January 1, 1992, shall certify that at least one maintenance staff member at each school in the district has received lead awareness training that includes all of the following:~~

~~(1) The health effects of lead exposure for children and adults.~~

~~(2) How to identify lead hazards in their school.~~

~~(3) How and where to report any lead hazards found.~~

~~(4) How to avoid disturbing lead paint.~~

~~(b) Any school district employee who performs maintenance tasks that generate lead dust in concentrations below the Cal OSHA Permissible Exposure Limit (PEL) of 50 micrograms per cubic meter shall have received training that includes all topics covered in the awareness training, plus maintenance and operations training as outlined in the Cal OSHA Lead in Construction Standards and in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations. The maintenance and operations training shall include all of the following:~~

~~(1) The identification of tasks that may cause high lead exposure.~~

~~(2) The purpose, proper selection, fitting use, and limitations of respirators.~~

~~(3) The use of other appropriate personal protective equipment.~~

~~(4) The health effects of lead exposure, including reproductive effects.~~

~~(5) Medical surveillance program requirements.~~

~~(6) The dangers of chelation and why its routine use is prohibited.~~

~~(7) Engineering controls and lead-safe work practices relevant to the worker's job assignment.~~

~~(8) Any lead compliance plan currently in effect.~~

~~(9) Locations of any regulated areas.~~

~~(10) Workers' right to see their own exposure and medical records.~~

~~(11) Containment and cleanup procedures.~~

~~(c) Districts may comply with the requirements of subdivisions (a) and (b) by participating in the State Department of Health Services' Lead-Safe Schools Program, or an equivalent training program as determined by the State Department of Health Services.~~

~~(d) Each school district shall document that all district employees or outside contractors who perform lead abatement activity or maintenance tasks that generate lead dust in excess of the Cal OSHA Permissible Exposure Limit of 50 micrograms per cubic meter have the appropriate certification required by Title 17 of the California Code of Regulations.~~

~~(c) No school district shall be granted funds by the State Department of Health Services to carry out lead abatement or control activities, unless at least one maintenance staff member at each school that has one or more buildings built before January 1, 1992, has received the appropriate training as described in this section, and certifies that it will comply with subdivision (b) of Section 32243.~~

~~(f) This section shall be implemented only to the extent funds for this purpose are appropriated by the Legislature in the annual Budget Act or other statute.~~

~~SEC. 6. Section 105310 of the Health and Safety Code is amended to read:~~

~~105310. (a) There is hereby imposed a fee on manufacturers and other persons formerly, presently, or both formerly and presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead, which have significantly contributed historically, currently contribute, or both have significantly contributed historically and contribute currently to environmental lead contamination.~~

~~(b) After July 1, 1992, but on or before January 1, 1993, the department shall, by regulation, establish specific fees to be assessed on manufacturers and other parties formerly, presently, or both formerly and presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead which, as determined by the department, have significantly contributed historically, currently contribute, or both have significantly contributed historically and contribute currently to environmental lead contamination.~~

~~To the maximum extent practicable, the fees shall be assessed on the basis of the following criteria:~~

~~(1) A person's past and present responsibility for environmental lead contamination.~~

~~(2) A person's "market share" responsibility for environmental lead contamination.~~

~~This section shall not apply to, and no fee shall be assessed upon, any retailer of lead or products containing lead.~~

~~(c) The fee shall be assessed and collected annually by the State Board of Equalization. The first payment of these fees shall be due~~

~~on or before April 1, 1993. The annual fee assessment in subdivision (a) shall be adjusted by the department to reflect both of the following:~~

~~(1) The increase in the annual average of the California Consumers Price Index, as recorded by the California Department of Industrial Relations, for the most recent year available.~~

~~(2) The increase or decrease in the number of children in California who are receiving services pursuant to this article.~~

~~This adjustment of fees shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(d) (1) No fee shall be assessed upon a person if that person can demonstrate, as determined by the department, that his or her industry did not contribute in any manner, as described in this section, to environmental lead contamination.~~

~~(2) No fee shall be assessed upon a party if that party demonstrates, as determined by the department, that the lead, or the product containing lead, with which it is currently, or was historically, associated does not currently, or did not historically, result in quantifiably persistent environmental lead contamination.~~

~~(e) The fee imposed pursuant to this section shall be administered and collected by the State Board of Equalization in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code. The fees shall be deposited in the Childhood Lead Poisoning Prevention Fund, which is hereby created in the State Treasury. Moneys in the fund shall be expended for the purposes of this chapter, including the State Board of Equalization's costs of collection and administration of fees, and for purposes of subdivision (b) of Section 32243, and Sections 32246 and 32247 of the Education Code, upon appropriation by the Legislature. All interest earned on the moneys which have been deposited into the Childhood Lead Poisoning Prevention Fund shall be retained in that fund.~~

~~(f) The fees collected pursuant to this section and the earnings therefrom shall be used solely for the purposes of implementing this chapter, and subdivision (b) of Section 32243, and Sections 32246 and 32247 of the Education Code. The department shall not collect fees pursuant to this section in excess of the amount reasonably anticipated by the department to fully implement this~~

~~chapter. The department shall not spend more than it collects from the fees and the earnings in implementing this chapter. In no fiscal year shall the department collect more than sixteen million dollars (\$16,000,000) in fees, as adjusted for inflation pursuant to subdivision (b).~~

~~(g) It is the intent of the Legislature, in subsequent legislation, to appropriate and deposit into the Childhood Lead Poisoning Prevention Fund the sum of one hundred twenty-eight thousand dollars (\$128,000) from the General Fund on July 1, 1992, to the Controller for allocation as loans as follows:~~

~~(1) Seventy-eight thousand dollars (\$78,000) to the department, for the purposes of adopting regulations to establish the fee schedule authorized by this section. The State Board of Equalization shall repay the amount of this appropriation, on or before June 30, 1993, with interest at the pooled money investment rate, from fees collected pursuant to this section.~~

~~(2) Fifty thousand dollars (\$50,000) to the State Board of Equalization, for the purposes of implementing this section. The State Board of Equalization shall repay the amount of this appropriation on or before June 30, 1993, with interest at the pooled money investment rate, from fees collected pursuant to this section.~~

~~(h) Regulations adopted for fee assessment and collection pursuant to this section shall be exempt from review by the Office of Administrative Law.~~

~~SEC. 7. The Legislature finds and declares that Sections 32246 and 32247 of the Education Code proposed by this act establish a grant program to fund the cost of inspection and mitigation of lead hazards, and training of maintenance workers.~~

~~SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~